

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF AGRICULTURE**

ITMO Revocation of the License Issued
to Thorson's Bakery

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-captioned matter came on for hearing on July 30, 2012, at 10:00 a.m. before the Honorable Manuel J. Cervantes, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, at the Sibley County Courthouse in Gaylord, Minnesota, pursuant to a motion for default judgment or, in the alternative, for summary disposition, made by the Minnesota Department of Agriculture ("MDA"). Kimberly Middendorf, Assistant Attorney General, appeared on behalf of MDA. Respondents Leon Thorson and Therese Thorson, Thorson's Bakery, appeared pro se.

The record closed on August 21, 2012, upon the lapse of Respondents' comment period.

Based upon the pleadings, record, and arguments of counsel, the ALJ makes the following:

FINDINGS OF FACT

1. Respondents Leon and Therese Thorson are retail food handlers who operate Thorson's Bakery in Gibbon, Minnesota. Respondents were licensed by MDA until September 2011, when MDA declined to renew Respondents' license following a pattern of repeat violations of Minnesota food laws.

2. From 2009 to present, MDA inspectors have attempted to bring Respondents' bakery into compliance. In that time, MDA has issued multiple sanitation and equipment violations, referred several repeat violations for criminal prosecution, and repeatedly warned Respondents that their license would not be renewed unless Respondents demonstrated substantial progress toward rectifying outstanding ventilation and plumbing issues.

3. At hearing, Respondent Leon Thorson admitted that neither a mop sink nor a Type I ventilation hood has been installed at Thorson's Bakery.

4. MDA served discovery requests upon Respondents on May 1, 2012. Respondents objected to the requests because of an error in the caption. MDA served discovery requests with a corrected caption on May 8, 2012. Respondents refused to provide any discovery, or to produce exhibits as required by the ALJ's scheduling order.

5. At hearing, Respondents had prepared no exhibits and sought to offer no testimony but that of Sibley County Economic Development Director Tim Dolan, for the purpose of establishing Respondents' hope to come into compliance in the future. MDA objected on grounds of relevance, and the ALJ sustained the objection.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Agriculture have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 28A.04, and 28A.13.

2. The Department has complied with all procedural and substantive requirements of statute and rule. The Notice and Order for Hearing, the Order to Show Cause, and the Motion for Default Judgment were in all respects, proper as to form and content.

3. Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.¹ A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.²

4. The moving party, the Department herein, has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the non-moving party, the Thorsons, must show that there are specific facts in dispute that have a bearing on the outcome of the case.³ The non-moving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.⁴

5. The MDA is responsible for the enforcement of the Minnesota Consolidated Food Licensing Law, Minn. Stat. §§ 28A.01 to 28A.16, the Minnesota Food Law, Minn. Stat. §§ 31.0001 to 31.961, the Minnesota Food Rules, Minn. R. ch. 1550, and the Minnesota Food Code, Minn. R. ch. 4626.

6. The Minnesota Food Code requires the installation of a mop sink to maintain adequate sanitation.⁵

7. The Minnesota Food Code requires the installation of a Type I NSF ventilation hood.⁶

¹ *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. R. 1400.5500, subp. K; Minn. R. Civ. P. 56.03.

² *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

³ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid-America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

⁴ *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 75 (Minn. App. 1988).

⁵ Minn. R. 4626.0080 2-301.15

8. Mr. Thorson admitted at the hearing that the items above have not been installed.

9. MDA's requests for admissions are deemed admitted as authorized by Minn. R. Civ. P. 36.

10. There are no genuine issues of material fact in dispute and summary disposition is appropriate in this case.

11. MDA staff properly declined to renew Respondents' food handler license based upon Respondents' history of food code violations and failure to comply with the Department's repeat orders to install a Type I NSF ventilation hood and a mop sink.

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner **AFFIRM** the grant of summary disposition and **AFFIRM** the Department's decision not to renew the Respondents' food handler's license.

Dated: August 27th, 2012

/s/ Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Agriculture will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not issue a final decision until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. Parties should contact David J. Frederickson, Commissioner, Department of Agriculture, 625 Robert Street North, St. Paul, MN 55155-2538, (651) 201-6000, to learn the procedure for filing exceptions or presenting argument.

⁶ Minn. R. 4626.1380

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.